

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEBRASKA

DEWAYNE K. LONG, a single person; and as )  
Trustee of THE DCSTH FOUNDATION. )

Plaintiff, )

Case No. BK 09-82347

Adv. No.

) COMPLAINT FOR WRONGFUL  
) FORECLOSURE; VIOLATION OF  
) AUTOMATIC STAY AND TO SET  
) ASIDE TRUSTEE SALE  
)

DEUTSCHE BANK, NA; J.P MORGAN CHASE )  
HOME BUYERS INCORPORATED, )

Defendant(s). )

COMES NOW, John M. Carter, in a limited appearance of representation in the adversary proceeding only, as counsel of record for the Plaintiff Dewayne K. Long requesting that the Court would set aside and vacate the wrongful foreclosure and sale of his residential property located at 16350 Crestfield Drive Omaha, Douglas County Nebraska 68136, for cause:

1. This Court has jurisdiction to hear this matter under 28 U.S.C. § 1334, because it arises in that case and is related to it.
2. This proceeding is a core proceeding.
3. Debtor filed for chapter 13 relief in this case on September 3, 2009, pursuant to 11 U.S.C. § 301, thus triggering an automatic stay, pursuant to 11 U.S.C. § 362(a), of all debt collection against the Debtor.
4. On June 29, 2010 Steffi A. Swanson, Successor Trustee, caused to be sold and then executed and delivered or caused to be executed and delivered a trustee's deed for the property described as:

Lot 26, Lake ridge Estates  
Sarpy County, Nebraska

5. This transfer and sale was in bad faith and breach of contract between Plaintiff Dewayne K. Long and Long Beach Mortgage, which later became Washington Mutual and now J.P Morgan Chase.

6. The Plaintiff's/Debtor's Chapter 13 Bankruptcy was dismissed on May 4, 2010 upon the Status Report of the Chapter 13 Trustee in support of the Trustee's Motion to Dismiss. (filing No. 172).
7. Plaintiff filed a Motion to Reconsider the Dismissal, which has not been decided, and subsequently filed an appeal of the dismissal of which notice of the appeal was sent to all interested parties.
8. The Notice of Appeal was also filed on the Court's docket on June 22, 2010. (filing 186).
9. Deutsche Bank as servicer of the note failed to provide Plaintiff with adequate notice of the trustee sale in violation of state law and failed to allow the Plaintiff to access available federal programs for home retention.
10. The sale was improperly held in violation of the automatic stay and the trustee's deed wrongfully executed, delivered, and recorded in that no breach of the obligation occurred because the Plaintiff was not afforded the opportunity to cure the delinquent payments through his Chapter 13 filing.
11. Based upon Plaintiff's information and belief, the Defendants never requested nor received Relief from the Automatic Stay.
12. Although the trustee's deed appears valid on its face, it is invalid, voidable, and of no force or effect regarding Defendant's interests in the real property.
13. The interest in the described real property claimed by Defendants based on the trustee's deed, is a cloud on Plaintiff's title in and to the real property, tends to depreciate its market value, restricts Plaintiff's full use and enjoyment of the real property, and hinders Plaintiff's right to unrestricted alienation of it. If the trustee's deed is not delivered and canceled, there is a reasonable fear that Plaintiff will suffer irreparable harm.
14. Plaintiff desires and is entitled to a judicial declaration quieting title in Plaintiff as of June 29, 2010, and restoring possession to Plaintiff.
15. Any amount of money still owed to Defendants, is unknown to Plaintiff and cannot be determined without an accounting.

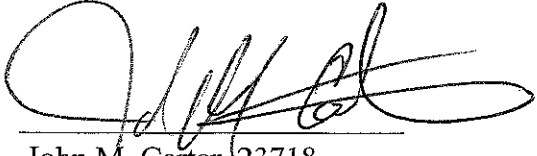
16. The defendants have violated the automatic stay provisions of the Bankruptcy Code, including but not limited to:

- a. 11 U.S.C. § 362(a)(1); and
- b. 11 U.S.C. § 362(a)(6).

**WHEREFORE**, Plaintiff demands judgment as follows:

- 1. Declaring the Defendants guilty of civil contempt by violating the automatic stay granted herein on September 3, 2009, for their actions on June 29, 2010.
- 2. Declaring that the Defendants violated the rights of the Plaintiff by their actions on or about June 29, 2010
- 3. That the Court issue (a) a declaration that the sale of the trust property is null and void and of no force or effect, and (b) an order setting aside the trustee sale of the real property.
- 4. That the Court (a) issue an order that Defendants, deliver the trustee's deed to the Court, and (b) cancel the trustee's deed.
- 5. That the Court order judgment quieting title in Plaintiff as owner of the real property described in paragraph 3, declaring that Defendant's have no right, title, estate, lien, or interest in the property adverse to Plaintiff, and ordering that Plaintiff be restored to possession of the real property.
- 6. That the Court renders an accounting determining the amount, if any, actually owed to Defendants by Plaintiff.
- 7. That the Court award damages for the unlawful detention of the premises at the rate of, \$1000.00 per month from, June 29, 2010 until delivery of possession to Plaintiff.
- 8. That Plaintiff recover all attorney fees and costs in this action, and that the Court award any other appropriate relief.

Date: July 7, 2010



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VERIFICATION

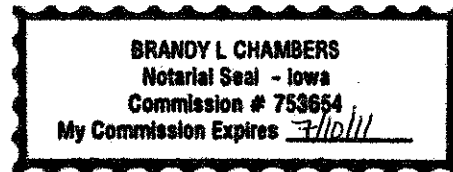
*Iowa bc*  
STATE OF ~~NEBRASKA~~ )  
*Pottawattamie*  
COUNTY OF ~~DOUGLAS~~ )  
*bc*

I, Dewayne K. Long, being first duly sworn on oath, depose and say that I am the Plaintiff named above, that I have read the contents of the foregoing Complaint and that the same are true as I verily believe.

*Dewayne K. Long*  
Dewayne K. Long

SUBSCRIBED AND SWORN TO before me this *17<sup>th</sup>* day of *June*, 2010.

*Brandy L. Chambers*  
Notary Public



**CERTIFICATE OF SERVICE**

The undersign hereby certifies that a copy of the above and foregoing was hand delivered and mailed to the following attorneys of record by regular United States mail, postage pre-paid, this 8<sup>th</sup> day of July, 2010

Deutsche Bank National Trustee  
Attn: Manuel Rivas, Trustee  
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Santa Ana, CA 92705

Steffi A. Swanson  
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Shaun James  
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